

Message Text

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TO USLO PEKING

C O N F I D E N T I A L STATE 071748

E.O. 11652: GDS-1

TAGS: OGEN, PDIP, AFSP, CH

SUBJECT: PRC RESTRICTIONS ON DIPLOMATIC POUCHES

REF: PEKING 348

1. WE CONSIDER THAT NEW PRC REGULATIONS ON DIPLOMATIC POUCHES THAT WENT INTO EFFECT 1/1/77 ARE INCONSISTENT WITH RELEVANT INTERNATIONAL LAW. CUSTOMARY INTERNATIONAL LAW IN,THIS RESPECT, IS CODIFIED IN THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS. ALTHOUGH BOTH US AND PRC ARE PARTIES TO THAT CONVENTION, THE ABSENCE OF RECOGNITION AND OF FORMAL DIPLOMATIC RELATIONS MAKES UNCERTAIN THE DIRECT APPLICABILITY OF THE CONVENTION IN TOTO. IN 1973, THE PRC WAS, MOREOVER, UNWILLING TO ACCEPT THE APPLICATION OF THE CONVENTION TO OUR RELATIONS. NEVERTHELESS, WITH RESPECT TO THE POUCH, THE CONVENTION SERVES AS A READY REFERENCE. WE OURSELVES HAVE BEEN APPLYING THE STANDARDS OF THE CONVENTION TO THE PRCLO AND HAVE HAD DOMESTIC LEGISLATION ENACTED TO PERMIT THIS; WE EXPECT RECIPROCAL TREATMENT.

2. ARTICLE 27 OF THE VIENNA CONVENTION GOVERNS DIPLOMATIC
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POUCHES AND PROVIDES IN RELEVANT PART AS FOLLOWS:

"3. THE DIPLOMATIC BAG SHALL NOT BE OPENED OR DETAINED.

4. THE PACKAGES CONSTITUTING THE DIPLOMATIC BAG MUST BEAR VISIBLE EXTERNAL MARKS OF THEIR CHARACTER AND MAY CONTAIN ONLY DIPLOMATIC DOCUMENTS OR ARTICLES INTENDED FOR OFFICIAL

USE."

THE PRC'S NEW REGULATIONS VIOLATE THESE STANDARDS IN SEVERAL RESPECTS. THE LIMIT OF THE CONTENTS OF POUCHES TO "DIPLOMATIC PAPERS, REFERENCE MATERIAL AND STATIONERY" IS UNJUSTIFIABLY RESTRICTIVE. THE SUGGESTION THAT POUCHES MAY BE INSPECTED TO ENSURE THAT THE CONTENTS CONFORM WITH THAT LIMITATION AND THAT POUCHES MAY BE DETAINED IF THEIR RECIPIENTS INDICATE THAT THEY CONTAIN OTHER MATERIALS IS LIKEWISE INCONSISTENT WITH THE CONVENTION.

3. ALSO RELEVANT IS THE 1973 DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN THE US AND THE PRC. THE US ADVANCE TEAM PRESENTED A DRAFT MEMORANDUM ON DIPLOMATIC PRIVILEGES AND IMMUNITIES TO THE CHINESE IN APRIL 1973, EMPHASIZING THAT IT WAS INFORMAL AND AD REFERENDUM. THE CHINESE SUBSEQUENTLY INDICATED ORALLY THAT THEY AGREED IN PRINCIPLE TO THE SUBSTANCE OF THAT MEMORANDUM AND WERE PREPARED TO ENTER INTO A FORMAL AGREEMENT. WE IN TURN NOTIFIED THEM IN JUNE 1973 THAT IT WAS NOT NECESSARY TO FORMALIZE THE AGREEMENT IN WRITING SINCE IT WAS ALREADY BEING IMPLEMENTED IN PRACTICE. WITH RESPECT TO THE POUCH, THE DRAFT MEMORANDUM PROVIDES THAT "THE DIPLOMATIC POUCH, WHETHER ACCOMPANIED OR UNACCOMPANIED, SHALL NOT BE OPENED OR DETAINED."

4. WE ASSUME THAT THE INCONSISTENCIES OF THE NEW REGULATIONS WITH THE VIENNA CONVENTION AND CUSTOMARY INTERNATIONAL LAW ARE A MATTER OF CONCERN TO MOST, IF NOT CONFIDENTIAL

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ALL, OF THE OTHER DIPLOMATIC MISSIONS IN PEKING. WE WOULD SUGGEST THAT USLO DISCUSS THIS MATTER WITH OTHER MISSIONS, AS APPROPRIATE, TO ASCERTAIN THEIR INTENTIONS. A COLLECTIVE INITIATIVE WOULD SEEM TO BE CALLED FOR, WITH COUNTRIES HAVING FORMAL DIPLOMATIC TIES WITH THE PRC TAKING THE INITIATIVE.

5. IF THE PRC ATTEMPTS TO APPLY THE UNACCEPTABLE PROVISIONS OF THE NEW REGULATIONS TO USLO BEFORE A COLLECTIVE INITIATIVE CAN BE TAKEN, USLO SHOULD REFUSE TO ALLOW INSPECTION OF THE CONTENTS OF THE POUCH, OR TO

SPECIFY ITS CONTENTS OTHER THAN IS NORMALLY DONE UNDER THE STANDARDS OF ARTICLE 27. USLO SHOULD REPORT TO DEPARTMENT IN DETAIL, WITH APPROPRIATE RECOMMENDATIONS PRIOR TO TAKING FURTHER STEPS.

CHRISTOPHER

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